

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 27 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HARISH HARIYO PREMJI

MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MRS SHILPA J UNWALLA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/03/2000

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), by virtue of an order passed by Commissioner of Police on 16th March, 1999, in exercise of powers under Section 3(1) of the

PASA Act.

2. The detaining authority took into consideration the seven offences registered against the petitioner with Rajkot City "A" Division Police Station for offences of theft. The last such offence registered is relating to 15th February, 1999. The petitioner was arrested on 20th February, 1999. Statements of anonymous witnesses were recorded on 21st February, 1999 and, thereafter, on 16th March, 1999, order of detention was passed.

3. While passing the order, in the grounds of detention, the detaining authority considered the seven offences registered against the petitioner, the statements of two anonymous witnesses and came to the conclusion that the petitioner is a dangerous person. The detaining authority exercised power under Section 9(2) of the PASA Act and did not disclose the identity of the witnesses and was satisfied that the petitioner was required to be urgently prevented from continuing his activities. Ordinary law cannot be resorted to and considering and considering the urgency, he is required to be detained under the provisions of the PASA Act. The authority considered that the petitioner is in judicial custody in all the offences registered against him. But he may apply for bail and get bail and, thereafter, pursue his illegal and anti-social activities, which may be detrimental to public order of the city of Rajkot and, therefore, detention under PASA Act is the last remedy which is required to be resorted to.

4. Mrs. Unwalla, learned advocate appearing by way of legal aid to the petitioner, who had applied through jail, submitted that the petitioner was in judicial custody when the order was passed and there is no cogent material to indicate that the petitioner was likely to apply for and get bail. She submitted further that statements of anonymous witnesses have been recorded on 24th February, 1999. On that day, the sponsoring authority was aware about the activities of the petitioner and if there was urgency, action would have been taken immediately. But the detention order has been passed after about three weeks on 16th March, 1999, which reflects that there was a delay and the urgency expressed in the grounds of detention is only nominal/verbal and not genuine. The order, therefore, is vitiated and the same may be quashed.

5. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He has placed reliance on the decision of the Apex Court in the case of

Sanjeev Kumar Aggarwal v. Union of India & Ors., AIR 1990 SC 1202, where in it has been held that detention order can be passed even while the detenu is in jail/custody.

6. Having regard to the rival side contentions, it may be noted that even if the contention raised by Mr. Dave is accepted and even if the decision relied upon by Mr. Dave is accepted, the detaining authority has to indicate cogent material for recording satisfaction for the need for detention and likelihood of the petitioner getting bailed out. That view is reiterated by the Apex Court in Abul Sathar Ibrahim Manik v. Union of India and Ors., AIR 1991 SC 2261, wherein the decision in the case of Sanjeev Kumar Aggarwal (supra) was also considered and the Apex Court set down certain conclusions. In the second conclusion, it has been stated that the detaining authority must indicate in the grounds of detention that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released, he is likely to indulge in prejudicial activities, then that would be one such compelling necessity to pass detention order. In Sanjeev Kumar Aggarwal's case, the Court referred to various judgments and quoted the decision of a Bench of three Judges of that Court in the case of Rameshwar Shaw v. District Magistrate, AIR 1964 SC 334 as under :-

"The decisions referred to above led to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities and it is necessary to

detain him in order to prevent him from engaging in such activities."

7. It is thus clear that merely because a man is in custody, it cannot be said that the detention order cannot be passed against him. The detaining authority must be aware about that fact that he is already in detention or in custody and must indicate that there were compelling reasons for justifying such detention. What are the compelling reasons are also indicated by the Apex Court, which are (i) that the detenu is likely to be released from custody in near future and (ii) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities and that it is necessary to detain him in order to prevent him from engaging in such activities.

8. Thus, by mere fact of the detenu being in custody, the detention order cannot be said to have been vitiated, but there must be cogent material to indicate that he is likely to be released in bail in near future and that he may again indulge in activities detrimental to public order. Here, in the instant case, the grounds of detention do not disclose any material indicating likelihood of enlargement of the petitioner on bail in near future nor any material is shown to indicate his future involvement in activities. In absence of material, the order can be said to have been based on extraneous material which would render it vitiated.

9. Since the matter deserves to be allowed on above grounds, the other contention is not required to be dealt with.

10. In the above view of the matter, the petition is allowed. The order of detention dated 16th March, 1999, passed against the detenu-Harish @ Hariyo Premji Makwana is quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs. Writ to be sent to jail authorities immediately.

[A.L. DAVE, J.]

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